

Report 2016

The most recent trends in dispute resolution in Poland



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Executive summary

Dentons' Litigation and Dispute Resolution Practice has completed Poland's first survey into the corporate disputes in Poland. The survey asked more than 200 management executives, heads of legal departments and business owners about the current situation and emerging litigation trends. The respondents were asked for their thoughts on a number of issues, including the reasons for the growing corporate litigation volumes across the country or the tools which the boards and heads of legal departments employ to prevent litigation. We also asked them whether Polish businesses use litigation strategies and if so, when exactly those strategies are developed. Our research has led to a number of surprising conclusions.

One of the many findings of our survey is that 64% of all corporate disputes end up in court. They are mostly related to damages for breach of contract, unfair competition, property interests, intellectual property rights or title to shares. In all other cases (36%), disputes are resolved amicably through settlement, arbitration or mediation processes. These methods are gaining in popularity given that litigating in court is more and more arduous, mostly in terms of the time involved and unpredictable outcomes.

The biggest challenge for businesses is to devise effective processes to secure against litigation. Not surprisingly, companies which are more afraid of litigation risks are more likely to deploy internal tools to prevent potential

criminal liability risks. They are also more reluctant to become engaged in litigation. Two-thirds of the firms interviewed have implemented dispute prevention mechanisms.

Importantly, firms which operate a legal department have a much wider range of prevention tools to choose from. All of the heads of legal departments surveyed confirm that they use a variety of dispute prevention processes:

- Analyzing the market and financial situation of their existing suppliers, customers and business partners, for example, by checking with credit reference agencies.
- Taking informed decisions when signing contracts or participating

in tenders. This requires detailed analysis of tender dossiers and contracts before they are accepted and signed and not just when a dispute has already happened.

- Monitoring industry-specific regulation (finance, pharmaceuticals, etc.) where the regulators (such as Poland's Financial Supervision Authority or Main Pharmaceutical Inspectorate) may put in place arrangements that will be relevant for litigation procedures or provide an opportunity that could secure a case win.
- Risk insurance, for example in construction projects.

Apart from these processes more than half of the firms that found themselves involved in over nine or ten new disputes annually, have implemented strategies for dealing with disputes.

Once involved in a dispute, one third of the companies surveyed analyze its impact on their business. Usually, the purpose of the analysis is to identify errors, put remedial plans in place and undertake preventive actions. The effects of litigation are analyzed in two dimensions. In the legal dimension, the outcome of the case is analyzed and changes are introduced (e.g. in contracts) to avoid the same mistakes in future. This also helps to prevent future litigation. In the business dimension, litigation is examined in terms of its impact on business performance and future growth. In this case, the analysis is always focused on the most strategic cases with substantial impact on the business.

Our research confirms that, in strategic cases, it is the owners and management who decide whether to engage in a dispute. Still, the decision ultimately requires extensive consultation, including input from lawyers and managers across different functions. Firms with more experience in disputes involve their legal departments to determine how their corporate interests would be protected in case of litigation or to analyze the reputational and other non-financial risks of a dispute. The heads of legal teams are aware that the business expects them to not only evaluate the situation but also to propose the safest solutions. Their task is to set case value thresholds, build robust cases, develop litigation scenarios and analyze the related risks.

Legal departments also determine how their companies' interests will be protected in case of litigation. The management board is involved in this process in nearly half of the respondent

companies. The usual practice is to engage business representatives in the decision-making process. Apart from the legal team and the management, other departments that are usually involved are sales (to assess commercial/business risks), finance (to forecast the impact on future cash flows or gather data on the loss involved) and - depending on the matter at issue - engineering (to assess technical aspects of a dispute). The best and largest law firms are retained for cases which require special treatment.

Apart from opportunities, litigation brings a number of threats, too. According to the heads of legal departments, the chief threats are the costs, duration and ambiguous law associated with the litigation. These threats are followed by business concerns, such as loss of reputation or financial loss. The CEOs and owners, on the other hand, focus on other litigation risks, with ambiguous law, uncertain litigation outcome and impact on the business cited as the most important ones.

Businesses are facing a noticeable increase in the volume of litigation. Every fourth respondent admits that the number of disputes in their line of business is increasing, every fifth has expressed the same opinion about disputes in their firm. According to our respondents, the vast majority of cases involve pending lawsuits against another company, and while there is higher litigation volume in some industry sectors, it remains unchanged in others. The respondents believe that the growth or stabilization in the number lawsuits depends on the nature of the sector, organizational developments, market trends and industry-specific regulation. Our survey has highlighted differences in litigation trends depending on the sector concerned. While there are more and more disputes in the service sector, their level has remained stable in manufacturing.

The respondents attribute the overall growth to increasing awareness among both institutional and individual customers, who are better educated, read their contracts more carefully, and are more eager to assert their rights. They also point to the direct and indirect effects of consumer protection watchdogs, such as the consumer ombudsmen, the Polish Competition Authority or consumer organizations. According to our respondents, companies in the most litigation-vulnerable sectors (such as insurance or media) factor in litigation against them as a business risk. They are well prepared for them and have standardized processes and procedures in place. What also contributes to more frequent litigation is the growing number of law firms, especially those with specialized expertise in vulnerable industries, such as insurance litigation firms or consumer class action attorneys. The end result is not only more litigation but also larger compensation awards in those cases.

Compared to lawsuits against respondent companies, the volume of lawsuits commenced by them remains low and is not growing. Businesses see taking other firms to court as a shameful necessity which (if it happens) they would rather not talk about. One explanation is that Polish firms believe that asserting their rights will not be seen in a positive light by other companies or the public at large. If at all, litigating companies only tend to disclose their claim enforcement cases. For every fifth firm, these are appeals against adverse administrative decisions and attempts to frustrate claims by opposing parties. Although they resort to criminal proceedings where their interests are prejudiced, one-third of our respondents say that this is rare. Such cases are usually limited to actions against non-paying clients, criminal offenses and instances of theft.

Another trend which our survey has identified (and which no doubt opens up new avenues in litigation) is the expanding digitization of services offered by law firms. On the one

hand, digitization makes cooperation with clients easier. On the other, it poses a threat to security of data and documents provided to outside attorneys. According to clients,

computer systems are not always adequately safeguarded, especially in small and medium law firms.



Wojciech Kozłowski, Partner with Dentons Warsaw and Co-Head of Dispute Resolution Poland and of Dispute Resolution Europe:

The specific nature of litigation and arbitration advice has been changing fast and the scope of services is now entirely different to what it was 10 years ago. We have decided to look into the essence of disputes in various industries to better understand the challenges our clients face and to identify those important, sometimes breakthrough, case situations where we can support them. For example, we can see increasing specialization in disputes within a given area of business, such as in construction litigation, a trend we observed already quite some time ago. In response to such demand from our clients, we were joined last year by a dedicated team of construction industry litigators.

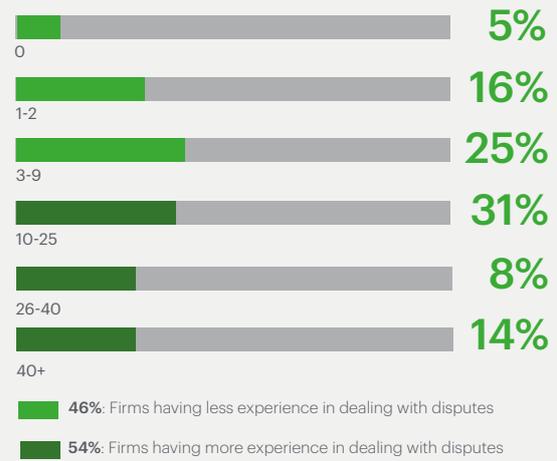


Dispute resolution in a company

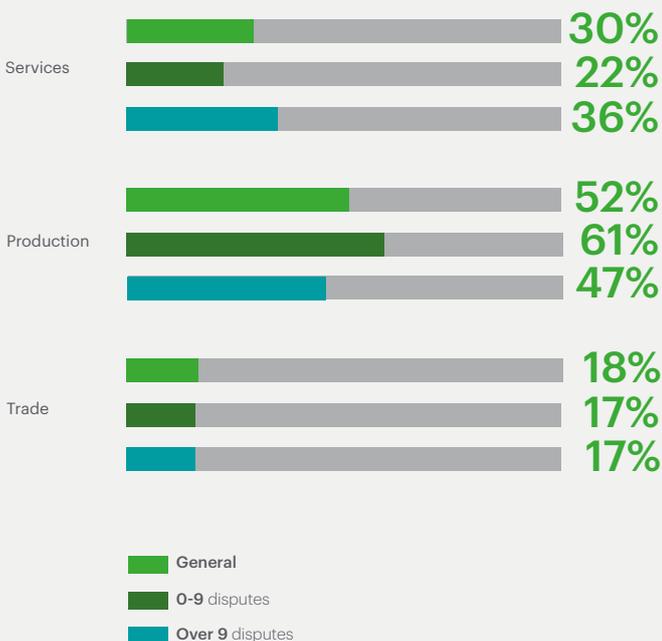
Reasons for entering into dispute



Annual average number of disputes



Business sector vs. number of disputes



Frequency of criminal proceedings





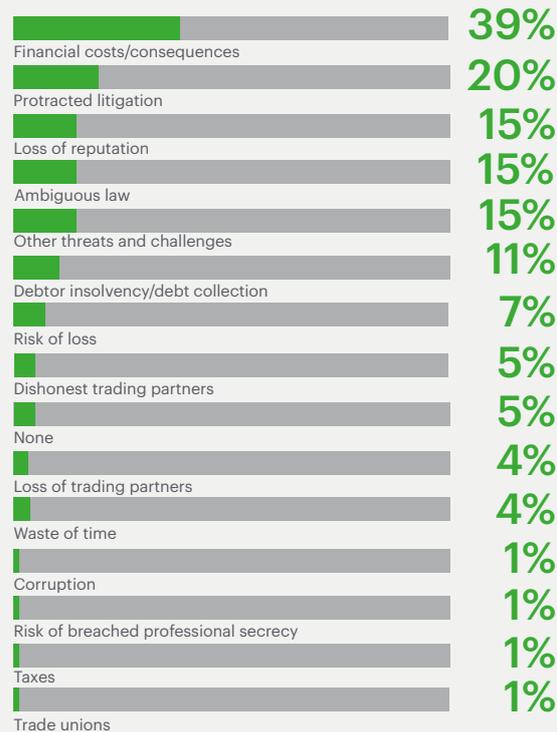
Agnieszka Wardak, Partner and Head of the Criminal Litigation and Internal Investigation practice team in Dentons' Warsaw office:

There are many situations where companies seek the protection of the criminal authorities. Anyone running a business, even the tiniest one, has experienced the frustration of non-payment. There are many reasons why people don't pay, including fraud where people order goods or services without ever intending to pay, or where debtors dissipate their assets to frustrate their creditors. Each year, there are a tremendous number of cases like this in Poland. According to police statistics, about 108,000 cases of fraud were reported in 2014. Businesses also pursue criminal cases against employees who are not only involved in plain theft but also steal valuable business secrets such as know-how or customer databases. If a leaving employee copies sensitive corporate data or promises new and better prices to customers once he or she has left for the competition, companies need to seek a prosecutor's protection in addition to a civil case. We should not forget about criminal cases involving massive product counterfeiting. For many firms, this is an important part of their brand protection strategy. For public contract bidders, on the other hand, it may be essential to seek protection where their competitors win tenders unfairly, by illegal colluding, providing misleading product information, or engaging in corrupt practices.

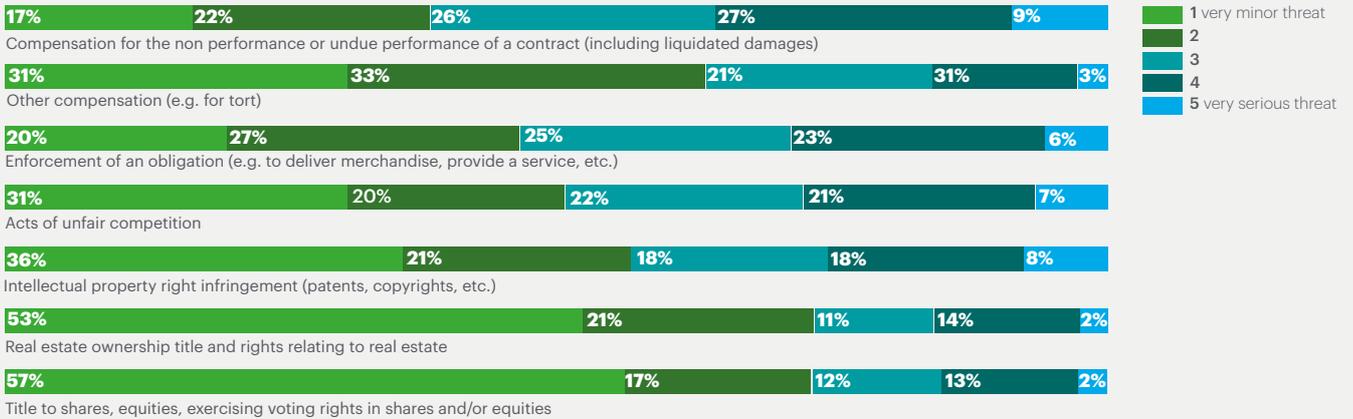
Annual average number of disputes requiring resolution in court



Leading threats and challenges associated with disputes



Disputes that pose the biggest threats for business



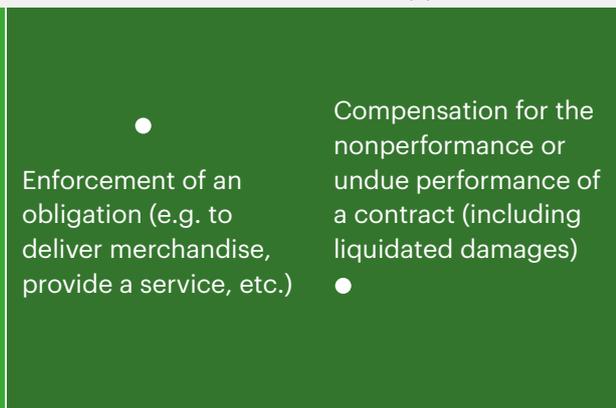
Types of disputes in the last 5 years

Minor threats appear more often



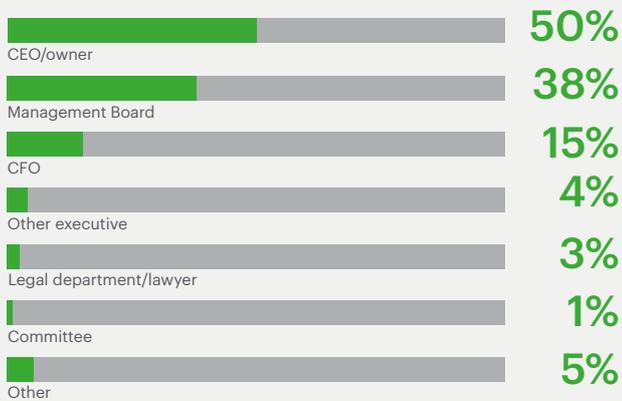
Minor threats appear rarely

Serious threats appear more often



Serious threats appear rarely

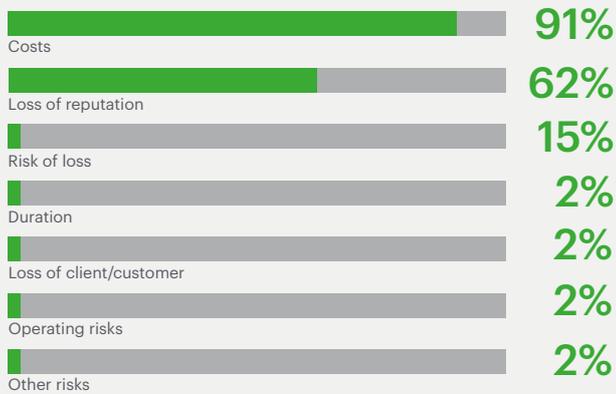
Who makes the decision to enter into a dispute?



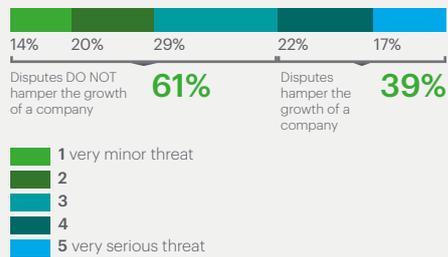
Patrick Radzimierski,
Partner at Dentons
and Co-Head of
Dispute Resolution
in Warsaw:

The results of our survey and the report make it clear that managers are uneasy about getting involved in litigation. Are these concerns always warranted, though? When used artfully, procedural instruments such as, for example, interim remedies can be immensely beneficial even before a dispute gets to its crucial stage. Is there a CEO who has not thought about using an injunction to stop their competitor's aggressive advertising campaign? Or about turning to a court enforcement office to seize the products of an adversary who has fallen foul of fair competition rules? Or about having a judicial mortgage entered on a property of his or her delinquent business partner? With all its imperfections, the Polish litigation process does make it possible to secure corporate interests in a lasting and effective manner. The trick is to manage your dispute in such a way as to mitigate any risks it involves but also recognize and exploit whatever chances and opportunities it might provide.

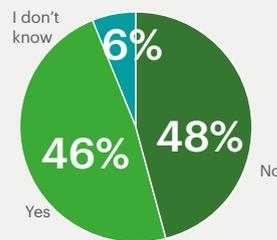
Risks analyzed before entering into a dispute



Inhibiting the business development vs. dispute resolutions



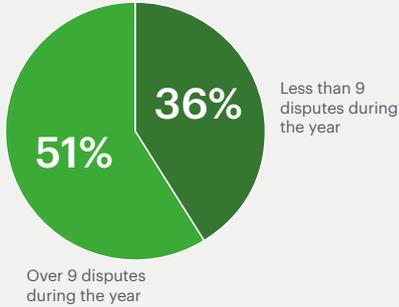
Number of companies having implemented a dispute strategy



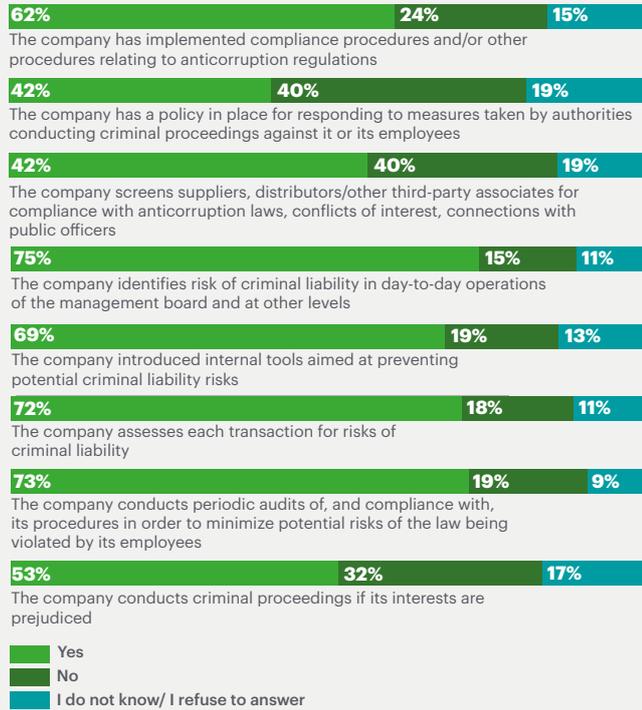
Anna Maria Pukszo, Partner, Head of the Restructuring, Insolvency and Bankruptcy practice in Dentons' Warsaw office:

We have seen numerous projects with consortium contractors fighting it out in court over the past few years. The current trend is for consortium members to retain outside counsel at the pre-litigation stage. Anticipating claims or lawsuits, and knowing that the slow-moving processes in Polish courts could spell years of litigation, companies want to be ready for the worst and tread prudently with an eye to securing the best position in any court action. A winning litigation strategy primarily depends on taking precautions commensurate with any threats as envisioned on the basis of logic and experience, and outside counsel is there to guide corporate clients towards those safeguards.

Companies with implemented dispute strategy vs. the annual number of disputes



Alternative ways of disputes avoidance



Katarzyna Bilewska, Partner, a Professor at the Faculty of Law and Administration, Warsaw University, and Head of the Corporate Disputes practice in Dentons' Warsaw office:

We are nowhere near US standards where only a fraction of disputes ends up in court, and a majority of cases are settled. Promoting alternative dispute resolution methods, such as mediation, might bring desired benefits going forward. What we see happening today, however, bears out the old truism that the best defense is good offence. It will be the business that has used its procedural options wisely and early enough that will grab a huge tactical advantage from the get-go. Does it mean that a company must always be involved in an expensive and drawn-out court dispute? Not necessarily. After all, your opponent's inclination to settle grows in proportion to the losses he or she will have suffered when fighting.

Litigation support

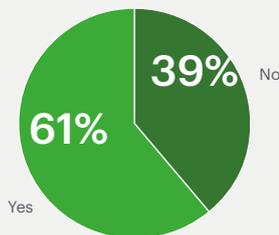
How companies deal with disputes



Number of law firms involved in ongoing cooperation related to disputes



Companies with internal legal department



Reasons for cooperating with more than one law firm



Key tasks of an in-house counsel are:

- **To manage litigation** in strategic disputes or where greater business insight is needed.
- **To act as a legal help desk** in projects which involve multiple subcontractors (for example in the construction industry).
- **To take part in new product development** in industries where contracts are part of the deal (such as the insurance sector).
- **To coordinate contracting** with suppliers and customers and to provide support when analyzing prospective business partners.
- **To liaise with outside law firms** if they are retained to manage litigation.

Respondent:

It is cheaper to retain an outside counsel to solve a specific problem than to keep in-house lawyers on a permanent basis. After all, it is not every day that contracts are signed or litigation is commenced. As such, contracting on a per-task basis seems absolutely reasonable. Larger firms, on the other hand, operate their own legal departments, teams or some other specialized units to deal with everyday issues, appeals, labor matters or other similar stuff. They also analyze contracts but do not necessarily need to specialize in litigation. As a result, this competence, too, is often outsourced when a lawsuit comes up.

Reasons why outside law firms are used to manage litigation needs:

- **Geography:** Firms use local providers to minimize the costs of counsel involvement in hearings held outside their office.
- **Resource optimization:** Caseloads vary over time. They can be very heavy or light. Relying on outside law firms means that services are bought strictly on

an as-needed basis and there is no need to maintain a large team.

- **Specialization and experience of outside providers:** This is relevant both where there is a large volume of similar cases and where cases are complex. In the former case, smaller and more narrowly-specialized firms are usually retained, while in the latter, the largest firms are contracted with extensive experience in difficult cases.
- **Pre-trial stage:** Sometimes, companies retain outside law firms at the pre-trial stage to help avoid litigation. If litigation cannot be avoided, then having already retained counsel means they will be better prepared.

The number of law firms has increased recently, which boosts competition but also makes the choice more difficult. Law firms are spontaneously divided into two groups. One is comprised of larger firms, which are both high-ranking and expensive. The other includes cheaper firms with a narrower specialization. The respondents believe there is an ongoing trend towards specialization within the industry.

At the pre-selection stage, image-related factors, such as professionalism and experience, are of the utmost importance in selecting a law firm. With smaller law firms, important factors include a narrow specialization in the field concerned and experience in the sector. For instance, if the case is about film production, the ideal law firm should know how films are made, while if it's a copyright case, the firm should understand music

rights management. When a law firm is selected to handle large cases, what matters are its ranking and market recommendations. The pre-selection stage, image-related factors, such as professionalism and experience, are of the utmost importance in selecting a law firm.

Selection criteria:

- **Case team competence:** The case team must have litigation experience and be familiar with procedural law. It needs to have experience in the area of the dispute, too, which means a broader view of client problems - one that goes beyond mere law and extends to current market developments or regulatory activity, including that of consumer protection watchdogs.
- **Cost control:** The respondents stressed that the fee model is changing away from hourly rates towards fixed fees.
- **Recommendations:** Companies seek recommendations about law firms or lawyers from people and other companies they trust.

There is another decision-making process involved in selecting specific lawyers with the most experience in the area - those who come highly recommended, are reliable, and can be trusted to handle even the most complex of cases. How owners and partners in distinguished law firms are perceived is therefore an important factor affecting the choice of a legal advisor.

Respondent:

We have to deal with a competent team of lawyers. We cannot have lawyers with specialization in other areas. These must be people who are efficient in handling litigation. This involves procedural expertise, which is not something all lawyers are familiar with. When your court visits are rare, you are not specialized. Let's call it procedural competence. The second thing is practical experience. The third one I would pay attention to is the focus on our cases. I would much rather have a team which is seriously focused on my cases, like the team we have at the moment. We have dozens, even hundreds of cases... We are a high-value customer and could buy this kind of commitment but that would be inefficient and cost-ineffective.

According to the heads of legal departments, the ideal law firm should:

- **Be able to assess risks properly** without excessive caution but not overly confidently, either. What counts is to be accurate in assessing the threats and anticipated consequences of litigation.
- **Handle the case reliably.** If real and serious threats are identified, it is vital to have such recommendations as "It's better not to start this case. We should look for other ways to resolve the conflict." The respondents do not

accept it when an outside law firm makes a threat assessment but shies away from clear recommendations.

- **Have analytical skills** to identify crucial points in litigation and offer out-of-the box solutions.

Respondent:

Teams which are focused on our cases are more committed. We have more frequent contacts with our court enforcement officer, we are getting more answers and we work with him as we go along. We also get tips about assets and where they are less visible. I find this sharing of knowledge very helpful. The end result is a better return on equity and a more efficient enforcement team. These circumstances or criteria are very important to me.

Dispute resolution market trends in business

Disputes as a risk factor

- Disputes are factored in as a business risk in the most litigation-vulnerable sectors, such as insurance or media. Still, companies are well-prepared for them and have standardized processes and procedures in place. For this reason, they do not view disputes as a threat.
- Disputes are considered to be a small threat in sectors which are less exposed to it, such as FMCG. Disputes are few in number and their impact on the business is negligible. Usually, they involve outstanding payments and contractual breaches.
- Based on our analysis of the results, heads of legal departments in large and well-known firms do not see disputes as much of a threat. What makes them confident are their household brand names (not everyone wants to sue large corporations) and good financial health (they can afford a dispute, even if it is prolonged and costly). The respondents say that litigation can be a threat to smaller operators, such as suppliers, which have less bargaining power and are weaker financially.
- Still, the respondents see a number of litigation threats which may be significant even for big corporations:
 - The time it takes to resolve a dispute. This concern is about business continuity. In many

industries, prolonged litigation may delay project completion (for example, in the construction sector) and failure to meet a deadline may trigger further disputes and fines.

- All respondents agree that large disputes involving extremely large compensation payouts can be a risk. Here, failure to recover the amount from a debtor may undermine the company's financial stability.
- Engaging in a conflict with key clients is a serious risk, too, which is why all respondents first try to find a way to settle.
- Finally, the outcome of a case may have an adverse effect on how a corporate image and reputation are perceived. This may involve unpredictable risks with long-term consequences for the business.

Risks of litigation

- The respondents say they factor in both legal and business risks in their threat analysis.
- Legal case assessment involves checking the claims in terms of how robust they are and whether they have any weaknesses; examining available evidence; and identifying elements that support the litigation route. Based on this analysis, the legal team comes up with recommended courses of action.
- The decision also requires an analysis of business risks. The

hardest part is to provide a holistic view of litigation and its impact on business, including a look at the risks over a long-term horizon. The respondents indicated a number of important areas in their risk analysis:

- **Financial:** Respondents believe these risks only seem easy to estimate and in fact require a wide-ranging analysis that goes beyond litigation spend and damages. For example, posting an apology on a well-known news website might be more costly than paying damages. On the other hand, a prolonged dispute over receivables could seriously affect the firm's financial stability.
- **Business:** These risks affect business continuity and stability.
- **Image and reputation:** Perhaps the most difficult to estimate, these risks can affect different business areas and have long-term consequences. This area is particularly significant for the management board.
- Disputes and their impact on business stability are examined both before and during litigation. Monitoring programs are put in place to identify or respond to any emerging threats or implement measures to prevent them or mitigate their negative effects.
- While recognizing the significance of financial aspects in deciding whether to litigate, the respondents stressed that

business factors were of the utmost importance, primarily those affecting continued operational stability.

Higher litigation volume

- While there is a higher volume of litigation in some industry sectors, it remains unchanged in others, depending on the nature of the sector, organizational developments, market trends and industry-specific regulation. For example, disputes are thought to be part and parcel of the insurance industry. Their number is also growing in construction, a sector with large investment risks.
- Different reasons are cited for the rise in business disputes, such as:
 - Increasing awareness among both institutional and individual customers, who are better educated, read their contracts more carefully, and are more eager to assert their rights.
 - Institutional actions, including regular publications on legal issues, by consumer protection watchdogs such as the consumer ombudsmen, the Polish Competition Authority, or other authority body.
 - The growing number of law firms with specialized expertise in vulnerable industries, such as insurance litigation firms. These providers profit from encouraging clients to litigate against their business partners. The end result is not only more litigation but also larger compensation payouts.
 - On the other hand, respondents report that the number of legal cases in the manufacturing sectors has stabilized in the past five years, and that their volume is dependent on turnover figures.

- Heads of legal departments stressed that what they mean by disputes are lawsuits against their companies. The number of lawsuits commenced remains at low and is not growing.

Respondent:

We are not seeing more litigation - it's rather stable. The volume is affected by various developments, for example by increased lay-offs. These are followed by more lawsuits, with leaving employees always appealing against dismissal or termination notices from their employers. This also affects their behavior in other lawsuits. These are the factors involved. It's that structural changes within the organization can spur or cause an increase in litigation.

Types of disputes

- The respondents categorize disputes into those that present lower risks to their business and those that are strategic and require special attention. The heads of legal departments say they set case value thresholds above which disputes require special treatment, with other criteria, such as reputation, involved in the mix.
 - **Lower-risk disputes** are usually industry-specific, such as compensation claims in insurance or debt collection in commerce. Their volume is usually high and they involve standard processes. Where in-house resources are limited, smaller, specialized firms are retained to handle them.
 - **Strategic disputes** involve building a robust case, developing litigation scenarios and analyzing the related risks. The best and largest law firms are retained for the most serious cases.

- The vast majority of cases involve lawsuits pending against other companies. They are divided into supplier and customer lawsuits.
 - The respondents give greater priority to the fast resolution of customer cases and usually seek settlement as a first option. If the desired outcome is not achieved, the decision is to litigate. However, the respondents stress that this is very rare.
- The respondents say they usually try to avoid suing their suppliers. Again, their belief is that both sides should first find a way to settle. Most often, the issue is that of outstanding payments. Debt recovery teams are brought in first, and legal departments are only involved as a last resort. In-house litigation staff handle breach of contract disputes. Situations that require legal support are reported by the business.

Engaging in disputes

- In strategic cases, the management decides whether to engage in a dispute. Routine industry-specific cases are coordinated by the legal department.
- In large disputes, the decision ultimately lies with the management but requires extensive consultation.
- The usual practice is to engage business representatives in the decision-making process.
- Apart from the legal team, other departments that are usually involved are sales (to assess commercial risks), finance (to forecast the impact on future cash flows) and - depending on the matter at issue - engineering (to provide the technical expertise in determining the consequences of continued litigation).

- The respondents believe that their in-house legal team's recommendations on whether to get involved in or stay out of a dispute are key in decision-making. The heads of legal teams are aware that the business expects them not only to evaluate the situation but also to propose the safest solutions.
- Frequent lower-risk disputes are generally managed using a universally applied action strategy. These standards set out detailed arrangements for how disputes should be managed and what their desired outcome should be. In disputes of this type, decision-making is automatic and is based on certain predetermined rules.

Respondent:

This is always up to the management. Different departments should take part in decision modelling but, as in any other firm or organization, the ultimate decision obviously rests with the management. It is up to the board to say, yes, we are in, you choose the firm. You do it. The methodology - this is usually left to the legal team.

Dispute resolution strategy

- Whatever standards are in place, and irrespective of whether a case is strategic or not, and whether it is handled in house or by an outside provider, the respondents agree that each dispute requires a unique strategy to manage it.
- Deciding on how to handle a dispute will affect the firm's business. All the companies surveyed concur that the number one element of their litigation strategy is to avoid it. What tends to be a decisive factor for parties in a

dispute is their economic interest. This makes them more open to look for some sort of a compromise.

- Another argument against pursuing the case in court is that it takes a lot of time and that litigation outcomes have recently become more unpredictable. It takes one and a half to three years for Polish courts to consider a case on the merits. This is a long waiting time and may pose a serious threat to a litigant's business operations.
- That is why businesses first try to resolve their dispute through settlement or mediation and arbitration. The respondents did say, however, that resolving a dispute out of court requires financial checks on the defendant. If the defendant is doing well, it will pay its liabilities sooner or later.
- Settlement is always the first choice for the heads of legal departments surveyed. Finding a compromise is essential for a number of business reasons, the most important of which are fast resolution, return to normal operation/ and cooperation, and maintaining the relationship.
- Arbitration is viewed as a significantly faster process than court litigation. Still, the respondents stressed that even though it is faster to complete, arbitration does not necessarily resolve the matter (arbitration awards can be appealed).
- Effective mediation is seen as faster than court litigation.

Monitoring case progress

- Even if outside counsel is retained to manage litigation, personal involvement of the legal department is still required, including case

monitoring. The respondents stress that this is not about control. While respondents rely on trust and experience when selecting outside providers, they do like to have some oversight over the case progress and emerging threat reports or be involved in joint analytical work on the most difficult cases. The measures involve:

- Detailed (weekly or monthly) reports for all cases, indicating any changes from earlier status.
- Regular updates on the risk of loss estimates.
- Joint analysis of the lawsuits in terms of their substantive content, agreed arguments, and proposed evidence.
- Best practice summaries showing which arguments find favor with the courts and which fail to do so. (This is why lessons learnt from failures and successes are as important in litigation scenarios. Law firms should sum up their observations after a lawsuit).
- In-house legal offices work with outside law firms based on schedules and current progress monitoring. Law firms formulate their litigation strategy and take responsibility for it. The role of a legal office is therefore limited to arranging meetings with business people to discuss the pending case, monitor its progress and consult on the most important decisions.

Analyzing the effects of litigation

- The companies surveyed analyze the impact of litigation on their business to identify errors and put remedial plans in place. The analysis also underlies preventive actions.

- The reasons why a case was lost are analyzed first. Some firms view this as a standard practice in all cases.
- If the case was managed by an outside provider, legal departments wait for case summaries with tips for improvement.

Respondent:

I would say that, strategically, long-term, we analyze our disputes to improve internal processes, to modify the way our business operates. Yes, we absolutely analyze this within our organization.

- The effects of litigation are analyzed in two dimensions:
 - **Legal:** The outcome of the case is analyzed and changes are introduced (e.g. in contracts) to avoid the same mistakes in future. This also helps to prevent future litigation.
 - **Business:** Litigation is examined in terms of its impact on business performance and future growth. In this case, the analysis is always focused on the most strategic cases with substantial impact on the business.

Respondent:

In practice, we attach great importance to the cases we have lost. We learn our lessons from them and put forward proposals to amend our contracts so that mistakes are not repeated. It may be that the courts have taken an unfavorable view of some arrangement. It would be pointless to press on with it. A better solution is to amend our insurance contracts as needed to avoid future disputes.

Basic dispute prevention processes

- Analyzing the market and financial situation of existing suppliers, customers and business partners. In specific cases, that means using credit reference agencies before taking part in a tender, etc.
- Monitoring the financial condition of key business partners.
- Detailed analysis of tender dossiers and contracts. This is another critical area of potential litigation exposure.
- Monitoring industry-specific regulations (finance etc.) where the regulator (FSA) may put in place arrangements that will be relevant for litigation procedures.
- Securing appropriate insurance, e.g. in construction projects.

Other trends

- **Respondents work with outside law firms more frequently.** Their number of outside providers has increased, too.
- **Digitization** makes it easier to cooperate as more and more documents are exchanged electronically. Because they are not always adequately safeguarded, computer systems at outside law firms can be a risk.
- **Litigating in court is increasingly difficult**, mostly in terms of the time involved and unpredictable outcomes. For those reasons, respondents are increasingly keen to settle or choose mediation or arbitration.

- **The responsibilities of legal teams are evolving.** Case lawyers should now work together with the business, not only showing available solutions and their consequences, but also identifying the likelihood of a loss.

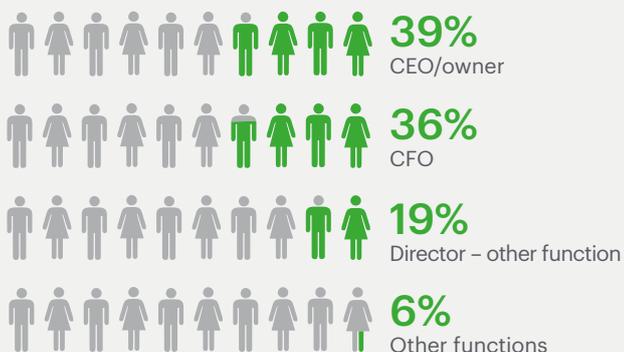
Respondent:

I don't think we will stop being lawyers in two or three years. But we will be slightly different lawyers. That is to say, we will be lawyer-advisors to the business - more like legal consultants than lawyers in the traditional sense. How we do our work will surely change. Some cases will get automated or standardized but I don't think there will be any sweeping changes in the short-term. Longer term, however, I believe our role will be advisory-consultative, going beyond merely legal advice.

About the survey

Commissioned by Dentons, this survey was carried out by ICAN Institute and Harvard Business Review Polska in March and April 2016 and it involved more than 200 executives, CLOs and business owners. Quantitative results were verified by means of an in-depth qualitative analysis based on interviews with business representatives. The purpose of the survey was to identify current trends in litigation and arbitration in Poland, including the kinds and number of cases, the dispute resolution methods and the business impact of the disputes.

Respondents' position



Shareholder structure



Core business of the companies



Market position



About Dentons

Dentons is the world's first polycentric global law firm. A top 20 firm on the Acritas 2015 Global Elite Brand Index, the Firm is committed to challenging the status quo in delivering consistent and uncompromising quality and value in new and inventive ways. Driven to provide clients a competitive edge, and connected to the communities where its clients want to do business, Dentons knows that understanding local cultures is crucial to successfully completing a deal, resolving a dispute or solving a business challenge. Now the world's largest law firm, Dentons' global team builds agile, tailored solutions to meet the local, national and global needs of private and public clients of any size in more than 125 locations serving 50-plus countries.

Our Warsaw office is the largest law firm in Poland with a market presence going back 25 years. More than 200 lawyers, tax advisors and consultants offer full-scope advice to clients from all major industry sectors.

Litigation and Dispute Resolution practice

Dentons' Litigation and Dispute Resolution practice advises on arbitration, mediation and all other forms of alternative dispute resolution. We have a dedicated team focused on product and regulatory based litigation, as well as specialist teams advising on other specific types of dispute such as financial services, property, employment, IT

and IP matters. As the largest Dispute Resolution practice in Poland, Dentons is unique in our ability to offer niche expertise needed to resolve some cases, corporate, construction, infrastructure, white collar crime, healthcare, bankruptcy and international arbitration.

The team boasts renowned academics, former judges and lawyers. Our lawyers employ the most appropriate tools and strategies to address your unique situation. Whether through innovative alternative dispute resolution techniques or skillful and persuasive advocacy in the courtroom, Dentons' lawyers maximize your prospects for a successful outcome. The Dispute Resolution team helps you assess and manage risks in relation to the legal costs of the dispute and minimize the likelihood of future litigation.

In an environment of market change, we are flexible and agile bringing together the right team to help achieve our clients' goals and provide them with sound legal advice every step of the way. Our key areas of specialization include:

- Banking and financial services
- Bankruptcy litigation
- Bribery, fraud and deceit
- Breach of contract / commercial torts

- Breach of fiduciary duty
- Company, joint venture, shareholder and partnership disputes
- Construction disputes
- Consumer protection and product liability
- Copyright and trademark law
- Corporate disputes
- Defamation
- Disputes with market regulators and other government agencies
- EU competition and anti-trust law
- Healthcare disputes
- Infringement of intellectual property and personal rights
- Insurance litigation
- International arbitration
- Judicial review
- Professional negligence
- Property, including landlord and tenant
- White collar crime / internal investigation

Reflecting our performance and customer appreciation, we are top-ranked by leading legal directories

The Legal 500 EMEA 2016
Dentons Dispute Resolution
practice – Tier 1.

*Chambers Global and
Chambers Europe 2016*
Dentons Dispute Resolution
practice – Band 2.

Ranked lawyers:
Wojciech Kozłowski
Anna Maria Pukszo
Patrick Radzimierski
Michał Jochemczak

Ranking of Law Firms by
Rzeczpospolita 2016
Dentons Dispute Resolution
practice – No. 3.

Best Lawyers, 2016–2017

Recommended lawyers:

Anna Maria Pukszo in
“litigation”, “insolvency and
reorganization law” and
“arbitration and mediation”.

Wojciech Kozłowski in
“biotechnology law” and “litigation”.

What Clients say

“Impressive Practice in the CEE and Commonwealth of Independent States regions, with high-quality teams in Poland and Russia. Strong in construction and insolvency litigation and contract disputes.”

“Highly visible on major construction disputes and insolvency proceedings. Well known for undertaking a variety of commercial litigation concerning shareholders, securities and joint ventures. International arbitration and corporate crime are other areas of expertise.”

“The advice is clear and concise and they are available at any time.”

“Capable of acting on a broad range of matters.”

The team

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